IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 64 of 2000

Date of decision 20.6.2007

State of H.P. **…Appellant.**

Versus

Ram Prasad and others. **…Respondents.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting? No

For the appellant : Mr. Ashok Chaudhary, Addl. A.G.
For the respondents : Mr. Ramakant sharma, with Mr. Malay Kaushal, Advocates.

Surjit Singh, Judge (Oral)

Respondents were sent up for trial for offences punishable under Sections 341, 343, 325 read with Section 149 of the Indian Penal Code, for allegedly causing grievous hurt to PW-1 Om Prakash and simple injuries to PW-7 Ram Saran, in prosecution of their common object.

2. Prosecution case, as per material on record, was that on 15.7.1997 around 10.30 p.m. when PW-1 Om Prakash, accompanied by one Nasib Chand, was returning to his house and was passing in front of the house of the respondents, all the respondents surrounded him and started beating him. One of the respondents, namely Ram Prasad, was

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Whether Reporters of Local Papers may be allowed to see the Judgment?

holding a ‘Danda’ and he dealt a blow of that ‘Danda’ on the right leg of PW-1 Om Prakash as a result of which his ankle joint was fractured. When PW-1 Om Prakash cried for help, his wife PW-3 Smt. Swaran Lata, a lady named Kamlesh (PW-8) and his brother PW-7 Ram Saran reached the spot. One Nasib Chand, who was accompanying PW-1 Om Prakash, also saw the occurrence. When PW-7 Ram Saran was trying to rescue PW-1 Om Prakash, he too was beaten up as a result of which he sustained three simple injuries. The matter was reported to the police the same day around 11.30 p.m. Police got both the injured persons medically examined. Medicolegal examination showed fracture of right ankle of PW-1 Om Prakash and several simple injuries on the person of PW-7 Ram Saran.

3. Trial Court has acquitted all the respondents holding that there is delay of one hour in lodging the FIR even though the distance between the place of occurrence and the police post can be covered in 10 - 15 minutes. Another reason given by the trial Court for acquitting the respondents is that Nasib Chand, who was accompanying PW-1 Om Prakash, had been with-held by the prosecution.

4. I have heard the learned Additional Advocate General as also the learned counsel for the respondents and gone through the record.

5. No injury other than swelling of the ankle was noticed on the person of PW-1 Om Prakash by PW-6 Dr. Kuldeep Sandhu, who conducted his medical examination. Anakle is not a fleshy part of the body. If fracture was caused by a blow of ‘Danda’, an external injury was supposed to be there on the skin covering the fractured part of the ankle, because as already noticed, ankle is not a fleshy part of the body but a bony part over

which the skin is stretched. Absence of any external injury on the ankle indicates that probably no blow of 'Danda' was given.

6. However, there is ample evidence on record proving that PW-1 Om Prakash was affronted by all the five respondents, when he passed in front of their house and some quarrel took place. It is also proved that when PW-1 Om Prakash raised hue and cry, his wife PW-3 Swaran Lata, a lady named Kamlesh (PW-8) and his brother Ram Saran (PW-7) came there. The fact is testified by PW-1 Om Prakash, PW-7 Ram Saran, PW-3 Swaran Lata and PW-8 Kamlesh. PW-8 Kamlesh is a relative of the respondents, being their first cousin, per their own deposition. She cannot be said to be interested in deposing against them, especially when nothing has been suggested to her in the cross-examination on behalf of the respondents that she has any axe to grind by making false statement against the respondents. This witness has categorically stated that when attracted by the cries of PW-1 Om Prakash she went to the spot she saw all the respondents quarrelling with PW-1 Om Prakash and one of the respondents was carrying a 'Danda', though she says that she did not see any of the respondents using 'Danda' or giving beating to PW-1 Om Prakash or PW-7 Ram Saran. Testimony of Ram Saran (PW-7) and Om Prakash (PW-1) with respect to the injuries caused to PW-7 Ram Saran is corroborated by the testimony of PW-6 Dr. Kuldeep Sandhu. Under these circumstances, it cannot be said that there was no evidence corroborating the testimony of the injured witnesses, namely PW-1 Om Prakash and PW-7 Ram Saran.

7. The incident had taken place around 10.30 p.m. The matter was reported to the police at 11.30 p.m., that is to say just one hour after

the occurrence. No doubt the police post, where the report was lodged, is stated to be at a distance which can be covered within ten – fifteen minutes, but looking to the fact that PW-1 Om Prakash was having fractured ankle, it cannot be said that there is inordinate delay in lodging the report.

8. As a result of the above discussion, I am of the opinion that the reasoning given by the trial Court is not supported by the evidence on record and is in fact perverse. The evidence, as discussed hereinabove, shows that all the respondents affronted PW-1 Om Prakash in prosecution of their common object to give him beating and in prosecution of that object, injuries were caused to PW-7 Ram Saran, who came to the rescue of PW-1 Om Prakash. Consequently all the respondents are convicted of the offence punishable under Section 323 read with Section 149 of the Indian penal Code.

9. I have heard the learned counsel for the respondents on the question of quantum of sentence. Learned counsel says that the incident having taken place about ten years back and the respondents having undergone the agony of trial for a long period and there being every likelihood that by now the parties might have patched up and even forgotten the incident, leniency be shown. In view of the above stated position, the respondents are let off after admonition.

June 20, 2007 (BC) **(Surjit Singh)**
Judge